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8 **UNITED STATES DISTRICT COURT**  
9 **SOUTHERN DISTRICT OF CALIFORNIA**  
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11 MICKAIL MYLES, an individual,

12 Plaintiff,

13 v.

14 COUNTY OF SAN DIEGO, by and  
15 through the SAN DIEGO COUNTY  
16 SHERIFF'S DEPARTMENT, a public  
entity; and DEPUTY J. BANKS, an  
individual,

17 Defendants.  
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Case No. 3:15-cv-01985-JAH-BLM

**ORDER GRANTING  
DEFENDANTS' APPLICATION  
FOR LEAVE TO FILE A MOTION  
TO CLAW BACK AND SETTING  
BRIEFING SCHEDULE  
[Doc. No. 243]**

19 Pending before the Court is Defendant's application for leave to file a motion  
20 to claw back privileged documents which were inadvertently disclosed during  
21 document exchange. Defendants contend they inadvertently disclosed documents  
22 clearly marked "attorney-client privilege" and after meeting and conferring, Plaintiff  
23 refused to comply with Federal Rule of Civil Procedure 26(b)(5)(B) and Federal Rule  
24 of Evidence 502(b). Defendants believe Plaintiff intends to disseminate the  
25 information to the media or at trial. They request the Court stay any further review  
26 or dissemination of the documents and set an expedited briefing schedule on a motion  
27 to claw back the inadvertently produced documents.

28 Plaintiff opposes the request. Plaintiff maintains, during the parties' exchange

1 of trial exhibits on July 19, 2022, he received a number of trial exhibits from  
2 Defendants with evidence that had not been previously identified or produced in  
3 response to his discovery requests or in supplemental disclosures and were not  
4 disclosed in any of the four privilege logs served by Defendants. He further maintains  
5 Defendants did not assert any privilege at the hearing before this Court on July 20,  
6 2022, when Plaintiff raised concerns about Defendants' surveillance, which is the  
7 subject of some of the identified documents Defendants seek to claw back, and only  
8 asserted privilege after Plaintiff outlined his concerns regarding their failure to  
9 produce documents and the issue of additional sanctions in a letter dated July 29,  
10 2022. Plaintiff argues Defendants' request is an attempt to line up a second bite of  
11 the apple addressing the issues surrounding the documents and Defendants' claims of  
12 privilege which are the subject of Plaintiff's motion for sanctions.

13 In response to Defendants' request to stay of any further review or  
14 dissemination of the documents, Plaintiff contends he has not disseminated any  
15 documents to the press or even attached them to his motion for sanctions. He argues  
16 the evidence should not be suppressed for purposes of trial, pretrial preparation or pre  
17 or post trial briefing.

18 Defendants should be permitted to address the allegedly privileged nature of  
19 the documents produced and seek their return. The Court recognizes issues addressed  
20 in a motion to claw back will likely overlap with those addressed in Plaintiff's pending  
21 motion for sanctions which is based on the allegedly privileged documents.

22 The Court finds good cause exists to grant Defendants' request to stay any  
23 dissemination and further review of the documents at issue.

24 Accordingly, IT IS HEREBY ORDERED:

- 25 1. Defendants application for leave to file a claw back motion is **GRANTED**.
- 26 2. Defendants may file a motion to claw back documents of no more than seven  
27 (7) pages. Defendants shall file the disputed documents under seal as an attachment  
28 to the motion and may file no more than five (5) additional pages of attachments

1 relating to their motion **on or before August 23, 2022.**


2 3. Plaintiff shall file a response to the motion of no more than seven (7) pages  
3 and no more than five (5) pages of additional attachments **on or before August 30,**  
4 **2022.**

5 4. Defendants may file a reply in support of the motion to claw back of no  
6 more than three (3) pages **on or before September 2, 2022.** No attachments will be  
7 accepted.

8 5. Plaintiff shall stay any further review or dissemination of the documents at  
9 issue.

10 6. Pursuant to Rule 26, Plaintiff shall retrieve any copies of the disputed  
11 documents disseminated to third parties and return the disputed documents and copies  
12 thereof to Defendants **on or before August 23, 2022.**

13 DATED: August 19, 2022

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16 THE HON. JOHN A. HOUSTON  
17 UNITED STATES DISTRICT JUDGE  
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